IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.33811 M OF 2005 (O&M)

DATE OF DECISION: APRIL 24,2007

Union of India.

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. Puneet Jindal, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for respondent No.1.

Mr. Amardeep Singh Gill, Advocate,
for respondent No.2.

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RANJIT SINGH, J.

Aggrieved by the order passed by Additional Chief Judicial Magistrate, Patiala, dated 11.4.2005, rejecting the prayer of Railway to allow it to proceed against respondent No.2, Union of India through Divisional Security Commissioner, Railway Protection Force, Ambala Division, Ambala, has filed this petition for quashing of the said order. It is further prayed that the railways authorities be allowed/permitted to launch complaint/ proceedings against respondent No.2, Kuldeep Singh under the provisions of the Railways Act, 1989 (hereinafter referred to as “the Act”).

The facts necessary to get the hang of the issues agitated in the petition are that on 3.10.2004, Truck bearing Registration No.PB-10-AK-9553, being driven by respondent No.2, Kuldeep Singh, dashed into the Railway Gate No.17-A while it was being closed by Cabin Man Ramji Dass. The incident was reported to Station Master, Railway Station, Patiala, who issued Memo dated 3.10.2004 to Company Commander, RPF Post, Patiala and SHO/RP, Patiala. Accordingly, SHO, GRP, registered an FIR No.59 dated 3.10.2004 under Sections 279, 427 IPC against respondent No.2, the driver of the truck. He was taken into police custody.

Grievance made in the petition is that the act of respondent No.2 would amount to an offence under Section 160 of the Act and as such, proceedings ought to have been initiated by an authorised officer of the Central Government as is envisaged under the provisions of Section 179 (2) of the Railways Act (Amended) 2003. It is also pleaded that the manner of holding the proceedings as prescribed in Section 180-A to 180-G of the Act was required to be followed and in terms of Section 180-C, any person if arrested was required to be forwarded to the authorised person, as prescribed under Section 179 (2) of the Act. Reference is also made to the notification issued by Government of India, Ministry of Railways in the Government of India Gazette dated 17.5.2004, vide which an officer of and above the rank of Assistant Sub Inspector in the Railway Protection Force has been prescribed as the officer authorised for the purpose of this Act in terms of sub-section (2) of Section 179 of the Act.

Petitioner-Railways had moved an application before the

Court of Additional Chief Judicial Magistrate, Patiala, for transfer of this case to Railway Protection Force, which is rejected on the ground that challan has already been presented and cognizance of the offence taken. It is observed by the Additional Chief Judicial Magistrate, Patiala, that facts in the case would not reveal ingredients of offence under Section 160 (2) of the Act against respondent No.2 as intention to commit an offence would constitute an essential ingredient of the said Section. A strong grievance is made by the petitioner against this part of the findings.

Notice of the petition was issued to respondent-Government of Punjab and private respondent No.2. While putting in appearance, respondent No.2 expressed his inability to contest this petition and might of the Union of India on account of his poverty. He was accordingly provided the services of an Amicus-curiae.

A reply on behalf of respondent No.2 is filed. Both the respondents have objected to the prayer made in this petition and have supported the order passed by the Additional Chief Judicial Magistrate, Patiala, which according to them is perfectly legal and justified having regard to the facts and circumstances of the case.

I have heard counsel for the parties.

Mr.Puneet Jindal, Advocate, appearing on behalf of the petitioner, has raised vehement objection to the observations made by Additional Chief Judicial Magistrate wherein he has held that the provisions of Section 160(2) of the Act are not attracted to the facts of this case. While saying so, A.C.J.M. has observed that a person committing rash and negligent act cannot be said to be possessing intention to do so. He accordingly did not find any valid

ground to transfer the case from Government Railway Police Station, Patiala to Railway Protection Force, Patiala. Mr.Jindal would says that contents of Section 160 (2) of the Act would not require an element of intention as is viewed by Additional Chief Judicial Magistrate and accordingly the impugned order would be unsustainable in law. Section 160 (2) reads as under:-

"***160. Opening or breaking a level crossing gate:-***

1. xx xx xx xx xx

2. If any person breaks any gate or chain or barrier set up on either side of a level crossing which is closed to road traffic, he shall be punishable with imprisonment for a period which may extend to five years.

xx xx xx xx xx"

The counsel has then referred to Section 179 (2) to say that offences under various provisions of the Act, including Section 160 (2) are required to be dealt with by the officer authorised by the notification issued by the Central Government, as referred to above. The provisions of Section 179 (2) are as under:-

179. Arrest for offences under certain Sections:-

1. xx xx xx xx xx

2) If any person commits any offence mentioned in Sections 137 to 139, 141 to 147, 153 to 157 to 167 and 172 to 176, he may be arrested, without warrant or other written authority, by the officer authorized by a notified order of the Central Government."

Sections 180-A to 180-F would then provide a procedure required to be followed for enquiring into the commission of offences

mentioned in sub-section (2) of Section 179.

Perusal of Section 160 (2) would show that breaking of any gate or chain or barrier, set up on either side of a level crossing, which is closed to road traffic, is made punishable with an imprisonment, which may extend to five years. Question requiring determination would be to see if this breaking of gate or chain or barrier would also include within its purview an act of rash or negligent driving leading to breaking of gate etc. There is no allegation against respondent No.2 that he had any intention to break the gate or chain or barrier while he was driving the truck. Though not specifically mentioned but intention appears to be part of the offence created under Section 160 (2) of the Act. Any act on account of negligence or rashness would per-force has to exclude intention to commit the act alleged. Breaking of gate or chain or barrier would include an element of intention in it as there is no indication that this offence is meant to punish rash or negligent act. Respondent No.2 is charged with an offence under Sections 279, 427 IPC, meaning thereby that he is accused of driving a truck in a manner rash or negligent so as to endanger human life or which is likely to cause hurt or injury to any other person. This offence is punishable with an imprisonment, which may extend to six months. In contrast, offence under Section 160(2) is more severely punishable. Obviously, there is no allegation against respondent No.2 for having hit the railway gate with any intention to break the same or to break the chain or barrier as set up. It appears to be a case of pure and simple accident, which would go to reveal an offence under Section 279 IPC. In my view, the purview of Section 160 (2) would be entirely

different than any act of rash or negligent conduct. The Additional Chief Judicial Magistrate is justified in observing that the offence of rash or negligent act would excludes from its purview the intention on the part of such person to commit such an act. By its very nature of offence of rash or negligent act, as created under various provisions of Indian Penal code, would exclude **'intention'.** Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury but without intention to cause injury, or knowledge that it would probably be caused. In this regard, reference can be made to ***S.N.Hussain Vs. State of Andhra Pradesh,*** AIR 1972 Supreme Court 685. Section 80 I.P.C. provides that nothing is an offence which is done by accident or misfortune and without criminal knowledge or intention in doing of lawful act or in a lawful manner by a lawful means and with proper care and caution. It is the absence of such proper care and caution which is the essence of criminality in rash or negligent acts which are made punishable under various Sections of the Penal Code. Section 160(2) of the Act does not appear to be punishing those acts which are done without proper care and caution but would include those which are done with criminal knowledge or intention.

The nature of offence created under Section 160 (2) can further be appreciated by making reference to the contents of Section 160(1). It provides that “if any person, other than a railway servant or a person authorised in this behalf opens any gate or chain or barrier set up on the either side of a level crossing, which is closed to road traffic, he shall be punished with imprisonment for a term which may extend to three years.” Obviously, opening of gate or chain etc. by

any person who is not a railway servant or not authorised in this behalf commits an offence under Section 160 (1) of the Act. On the face of it, this Section is meant to punish the deliberate conduct on the part of such person to open the gate etc. In other words, it would not include any rash or negligent conduct. Section 160 (1), thus, provides an act of opening of the gate etc. and sub-section (2) of Section 160 of the Act creates an offence on the part of any person who **breaks** any gate or chain or barrier. This whole Section, as such, would exclude the element of rash or negligent act or omission meaning thereby that the Section is meant to punish an intentional mis-conduct. A doubt, if any, in this regard, can be set at rest by making a reference to the provisions of Section 154 of the Act, which punishes a rash or negligent act or omission on the part of any person which endanger safety of any person travelling or being upon the railway etc. Similarly, a wilful act or omission on the part of any person, which endanger or causes endanger to the safety of travelling of any person on or being upon any railway, has been made punishable under Section 153 of the Act. A distinction between a wilful and a negligent or rash act, as such, is clearly legislated. No indication can be gathered from the contents of Section 160 of the Act that this Section is meant to punish any act which is rash or negligent to exclude intention. The allegation against respondent No.2, is for driving the vehicle in a rash or negligent manner and, as such, would not fall within the purview of Section 160 (2). Accordingly, the provisions of Section 179(2) would not have any applicability to the present case. The Additional Chief Judicial Magistrate, Patiala, has rightly taken cognizance of the offence on

the basis of FIR registered under Sections 279, 427 IPC, which is the offence revealed from the facts of the case.

No infirmity, as such, is noticed in the impugned order. Otherwise also, there is no justification in burdening respondent No.2, a poor citizen, to face investigation and trial by the Railway Protection Force. It is not made clear how Section 160 (2) of the Act would attract to the facts of the case. The prayer of the petitioner for transfer of this case from Government Railway Police Station, Patiala to Railway Protection Force, Patiala, for investigation and trial can not, thus, be accepted and is declined.

There is no merit in the petition and the same is hereby dismissed.

April 24, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**